

**BEFORE THE
MAHARSHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

COMPLAINT NO. CC00600000001906

Salil Kant ..Complainant

Vs.

Sandesh Sable (Prop. of Shrutika Complex) ..Respondent.

MahaRERA Regn. No. P51700009040

CORAM: Hon'ble Shri Madhav Kulkarni.

Appearance :

Complainant : In Person

Respondent : Adv. Gyanchandani

ORDER

(Dated 18th March, 2019)

1. The complainant who had booked a flat with the respondent/builder, seeks withdrawal from the project and refund of the amount paid, with compensation, as the respondent failed to deliver possession of the flat as per agreement.
2. As usual, the necessary details of the complaint are missing in the online complaint. What is mentioned is that complainant had booked a flat in July, 2013 and registration was done on 19.03.2014. The respondent gave the date for delivery of possession as April, 2014 but failed to deliver possession. It is also claimed that the complainant had sought housing loan from DHFL and was paid to the respondent and that rent is being paid by the complainant.

3. From the agreement it can be made out that it is dated 19.03.2013. The respondent had agreed to sell flat No. 601 on 6th floor, in the building known as Shrutika Complex in the C wing having carpet area of 43.12 sq. mtr. at Kharvai, Badlapur, Dist. Thane for a total consideration of Rs.17.83 lacs. As per clause No. 5, the respondent agreed to give possession by the end of April, 2014. Date of registration of agreement was 19.03.2014. How much amount was paid by complainant from his pocket and how much loan was disbursed by the DHFL is not made clear. However, as the respondent failed to deliver possession of the flat as per terms of the agreement, the complainant has filed this complaint.
4. The complaint came up before Hon'ble Chair Person on 09.05.2018 and came to be transferred to Adjudicating Officer. The matter came up before me on 12.06.2018. The respondent filed written explanation but none from the respondent was present and the respondent was represented by Advocate Raheja. Matter was adjourned to 03.07.2018 for recording plea of the respondent. However, plea could be recorded only on 11.10.2018. The arguments in the matter were heard on 21.12.2018. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.
5. The respondent has alleged that his is sole proprietary concern. The complaint suffers from misjoinder and non-joinder of necessary parties. The project was undertaken at village Kharvai, Tal. Ambernath, Dist. Thane within local limits Kulgaon Badlapur Municipal Council. The land is belonging to one Smt. Charubai Harishchandra Dhumal who wanted to develop the property and is therefore, co-promotor and had executed irrevocable Power of Attorney in favour of the respondent. It is admitted that complainant had booked flat as alleged. It is alleged that

during intervening period, there were several hurdles resulting in unavoidable and undesirable litigations from the predecessor of the owner. There were stay orders from the Civil Court and stop work notices from Municipal Council and complaints from vested interests leading to hampering of work. These circumstances, were in the nature of force majeure and beyond the control of the respondent. The complainant was fully informed about the circumstances. After hard work and rigorous follow up, respondent was able to complete the work of construction and Municipal Council issued Occupation Certificate. Vide letters dated 17.03.2018 and 25.04.2018, the complainant was called upon to pay the balance amount as per the agreement, of Rs.2,81,868/- and receive the possession of flat forthwith. The complainant has not made payment and has filed this complaint mala fide. The complainant kept quiet for 4 years. The complainant availed loan of Rs.15,42,532/- from DHFL but defaulted in repayment of instalments. For recovery of amount of Rs.14,37,159/-, DHFL has taken steps under SARFEEA Act being secured creditor and obtained possession of flat No. 601 vide communication dated 22.01.2018. If complainant pays Rs.2,81,868/- and seeks clearance from DHFL, the respondent is ready and willing to handover the possession of the flat to the complainant. The complaint therefore, deserved to be dismissed.

6. On the basis of rival contentions of the parties, following points arise for my determination. I have noted my findings against them for the reasons stated below:

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POINTS	FINDINGS
1 Has the respondent failed to deliver the possession of the flat to the complainant as per the agreement, without there being circumstances beyond his control?	Affirmative
2 Is the complainant ^{is} entitled to the reliefs as claimed?	Affirmative
3 What Order?	As per final Order.

REASONS

7. Point No.1 and 2 – As stated earlier, as per agreement clause no. 5, date of delivery of possession was April, 2014. Date of execution of agreement appears to be 19.03.2013 and date of its registration appears to be 19.03.2014. The complainant alleged that he had booked the flat in July, 2013. There is no clarity in the contention of the complainant. No booking receipt is placed on record. At arguments stage, it was alleged that agreement was executed in March, 2013. Initial payment was of Rs.4.11 lacs and DHFL housing loan was Rs.12,39,360/-Rs.1,08,470/- were spent for ~~an~~ stamp duty and registration. The respondent demanded Rs.2,81,868/- as maintenance charges.
8. The respondent has pleaded that force majeure. The respondent is relying on the letters of Municipal Council dated 26.06.2013 and 05.10.2013. There is reference to the Civil Suit in the Court of CJJD, Ulhasnagar NO.156/2013. There is also reference to the Commencement Certificate dated 22.03.2012. The letter reads that in her explanation Smt. Charubai Harishchandra Dhumal as well as present respondent, did not explain from which direction the land was allotted to the person who had given objection. Vide letter dated 05.10.2013, the Order to stop construction work was withdrawn. This is the period of 3 months. Vide letter dated 12.03.2014 Municipal Council informed the respondent and Smt.

Charubai H. Dhumal that they were required to provide map of measurement within 15 days, failing which, Commencement Certificate will stand cancelled. Chart about dates in RCS No.256/13 pending before CJD Court, Ulhasnagar is placed on record. On 09.01.2019, matter was shown as un-ready. It appears that Plaintiff namely Shrinivas Waman Oak and another sought to amend their plaint to incorporate alternate prayer for partition of the property in suit for injunction. The Order allowing the amendment was challenged in Writ Petition No.5986/2014 and Writ Petition was dismissed.

9. As to whether complainant was made aware of hurdles, there is no whisper about it in the agreement.

The respondent is a professional builder and expert legal advice was available to him. It appears that he had sought advice from Advocate Joglekar. There is no record to show that he had explained all these circumstances to the complainant and complainant had consented to extension of time for delivery of possession. The respondent has failed to establish that he could not deliver possession as per the agreement, due to the circumstances beyond his control. I therefore, answer point no. 1 in affirmative.

10. The complainant claims that he sought housing loan of Rs.12,39,360/- from DHFL. He paid monthly instalment of Rs.11,564/- from 19.06.2014 to 15.06.2016. He paid Rs.4.11 lakhs including payment of Rs.1,08,470/- for stamp duty and registration. The respondent admits having received Rs.16,40,360/- out of agreement amount Rs.17.83 lakhs. The respondent claims development charges of Rs.1.15 lakhs and advance maintenance charges of Rs.24,228/-. The respondent claims that Rs.2,81,868/- are due from the complainant. The respondent admitted having received an amount of

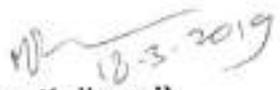
Rs.16,40,360/- out of Rs.17,48,830/-. Out of it, the complainant will be entitled to refund of stamp duty as per the rules and that amount needs to be deducted. Therefore, the complainant is entitled to recover the balance amount together with interest as per the Rule 18 of Maharashtra Rules. I therefore, answer point no.2 in affirmative and proceed to pass following Order.

ORDER

1. This complainant is allowed to withdraw from project.
2. The respondent to pay Rs.17,48,860/- subject to claims of DHFL, excluding stamp duty amount which can be refunded as per the rules, together with the interest @10.70 p.a. from the date of payments till final realisation.
3. Respondent to pay Rs.20,000/- to the complainant as costs of the complaint.
4. The complainant to execute cancellation deed at the cost of the respondent.
5. The respondent to pay above amounts within 30 days from the date of this Order.

Mumbai

Date : 18.03.2019


(Madhav Kulkarni)
Adjudicating Officer
MaharERA